

**FLATHEAD COUNTY PLANNING BOARD  
MINUTES OF THE MEETING  
JANUARY 8, 2020**

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| <b>CALL TO ORDER</b><br><b>6:00 PM</b>   | A meeting of the Flathead County Planning Board was called to order at approximately 6:00 p.m. at South Campus Building, 40 11 <sup>th</sup> Street W, Ste. 200, Kalispell, Montana. Board members present were Dean Sirucek, Sandra Nogal, Jeff Larsen, Elliot Adams, Jim Thompson and Kevin Lake. Ron Schlegel, Greg Stevens, and Mike Horn had an excused absence. Donna Valade, Erik Mack, Rachel Ezell, Joseph Bauer, and Mark Mussman represented the Flathead County Planning & Zoning Office.<br><br>There were 49 members of the public in attendance. |
| <b>APPROVAL OF MEETING MINUTES</b><br><b>6:01 PM</b>   | Sirucek made a motion, seconded by Lake, to approve the December 11, 2019 meeting minutes.<br><br>Motion passed unanimously on a roll call vote.  |
| <b>ELECTION OF OFFICERS (CHAIRMAN)</b><br><b>6:01 PM</b>   | Lake made a motion, seconded by Nogal, to elect Jeff Larsen as Chairman of the Flathead County Planning Board.<br><br>Motion passed on a 5-0 roll call vote. Larsen abstained.  |
| <b>ELECTION OF OFFICERS (VICE CHAIRMAN)</b><br><b>6:02 PM</b>  | Lake made a motion, seconded by Adams, to elect Greg Stevens as Vice Chairman of the Flathead County Planning Board.<br><br>Motion passed unanimously on a roll call vote.  |
| <b>PUBLIC COMMENT</b><br><i>(Public matters that are within the jurisdiction of the Board 2-3-103 M.C.A)</i><br><b>6:03 PM</b> | None  |
| <b>DISCLOSURE OF ANY CONFLICT OF INTERESTS</b><br><b>6:03 PM</b>   | None  |

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| <b>SHARON LOBO</b><br><b>(FZC-19-20)</b><br><b>6:03 PM</b>       | A zone change request by Sharon Sharp Lobo for property in the Bigfork Zoning District. The proposal would change the zoning on property located at 460 Coverdell Road, Bigfork, MT from <i>SAG-10 (Suburban Agricultural)</i> and <i>SAG-5 (Suburban Agricultural)</i> to <i>SAG-5 (Suburban Agricultural)</i> . The total acreage involved in the request is approximately 20 acres. |
| <b>STAFF REPORT</b><br><b>6:04 PM</b>                            | Donna Valade reviewed staff report FZC-19-20 for the board.  |
| <b>BOARD QUESTIONS</b><br><b>6:06 PM</b>                         | Nogal inquired about the park pictures that were included in the packet they had received. Valade explained that the pictures were of where she had posted notice for the public hearing.  |
| <b>APPLICANT PRESENTATION</b><br><b>6:07 PM</b>                  | Sharon Lobo, 985 Electric Ave, was the applicant and said she had nothing to add to the presentation but was available for questions.  |
| <b>BOARD QUESTIONS</b><br><b>6:08 PM</b>                         | None   |
| <b>AGENCY COMMENTS</b><br><b>6:08 PM</b>                         | There were no public agencies present to comment. The staff reviewed the written comments during the staff report presentation.  |
| <b>PUBLIC COMMENT</b><br><b>6:08 PM</b>                          | None   |
| <b>MAIN MOTION TO ADOPT F.O.F. (FZC-19-20)</b><br><b>6:08 PM</b> | Sirucek made a motion, seconded by Lake, to adopt staff report FZC-19-20 as findings of fact.  |
| <b>BOARD DISCUSSION</b><br><b>6:09 PM</b>                        | None   |
| <b>ROLL CALL TO ADOPT F.O.F. (FZC-19-20)</b><br><b>6:09 PM</b>   | Motion was passed unanimously on a roll call vote.   |

**MAIN MOTION  
TO  
RECOMMEND  
APPROVAL  
(FZC-19-20)  
6:09 PM**

Lake made a motion, seconded by Nogal, to recommend approval of FZC-19-20 to the Board of County Commissioners.

**BOARD  
DISCUSSION  
6:09 PM**

None

**ROLL CALL TO  
RECOMMEND  
APPROVAL  
(FZC-19-20)  
6:09 PM**

The motion passed unanimously on a roll call vote

**MARILYN  
NOONAN  
(FZC-19-21)  
6:10 PM**

A zone change and neighborhood plan amendment request by Marilyn Noonan, for property in the Highway 93 North Zoning District. The proposal would change the zoning on property located at 132 Tronstad Road near Kalispell, MT from *SAG-10 (Suburban Agricultural)* to *B-2 (General Business)*. The total acreage involved in the request is 4.83 acres.

**STAFF REPORT  
6:10 PM**

Erik Mack reviewed staff report FZC-19-21 for the board.

**BOARD  
QUESTIONS  
6:13 PM**

Nogal asked staff to point out surrounding B-2 properties located in the area of the subject property. She asked what current activities were happening on those particular B-2 properties and Mack said currently nothing.

Larsen asked if the City of Kalispell had businesses located in the area. Mack replied they had the Silverbrook Subdivision and on Church Drive they had the B-2 PUD. Larsen asked if the city's B-2 was similar to the county's B-2 and staff replied that it was pretty close. Staff also pointed out that there was B-1 nearby as well.

Larsen asked about Finding #8 and how it related to what the City had zoned nearby. Mack explained how he had processed that finding.

**APPLICANT  
PRESENTATION  
6:16 PM**

There were no applicants present. Larsen explained that they had received correspondence that the applicant was sick and unable to attend. The applicant had expressed that they would be willing to table it if needed but Larsen did not feel it was necessary.

**BOARD  
QUESTIONS  
6:17 PM**

Sirucek asked if the application, to be reviewed next month, would be a zone change as well and could possibly be combined as one overlay. Mack said there was one done last summer that had the highway overlay and was less

than a ¼ mile of the subject property. The one, between that one and the subject one, was proposing a B-3 zoning with the highway overlay as well. This would be the only one, of the three, that would be without the highway overlay and would be B-2 while the other ones would be B-3.

Larsen asked that they be refreshed on the highway overlay. Mussman said the overlay would require some design standards for future development; landscaping, buffering, and better control access on to Hwy 93. He said it was important to remember that this property, for a brief amount of time, was zoned B-2HG and the district court struck that down and the B-2HG was eliminated. This property also included Mild Fence, Co.

Larsen asked if they should consider the application as it was. The board discussed it and agreed to move forward.

**AGENCY  
COMMENTS  
6:20 PM**

There were no public agencies present to comment. The staff reviewed the written comments during the staff report presentation.

**PUBLIC  
COMMENT  
6:20 PM**

Sharon DeMeester, 415 Chestnut Dr., spoke in opposition of the application and started by giving a history of the area that the subject property was located in. She said the original Growth Policy Plan, which was developed with the City of Kalispell, had nodules where commercial [development] would be. Tronstad was to be one of those “nodules” where there would be proper access to the highway. She stated that, originally, the zoning along the highway was B-1 with reason being that B-1 did not have 24 hour outdoor displays. In her opinion, the original zoning and intent had been trashed. She said the original intention of keeping the highway open and free of traffic hazards had been totally disregarded. From her experience, she felt the highway was very treacherous. She said that all of the little businesses that had been put along there, just increased the problems with accidents. She said there had been a total disregard for the original growth policy for that area. She was concerned about the increase of traffic and safety.

**STAFF  
REBUTTAL/  
COMMENTS  
6:24 PM**

None

**MAIN MOTION  
TO ADOPT F.O.F.  
(FZC-19-21)  
6:25 PM**

Sirucek made a motion, seconded by Adams, to adopt staff report FZC-19-21 as findings of fact.

**BOARD  
DISCUSSION  
6:25 PM**

None



**ROLL CALL TO  
ADOPT F.O.F.  
(FZC-19-21)  
6:25 PM**

Motion was passed unanimously on a roll call vote.

**MAIN MOTION  
TO  
RECOMMEND  
APPROVAL  
(FZC-19-21)  
6:25 PM**

Adams made a motion, seconded by Lake, to recommend approval of FZC-19-21 to the Board of County Commissioners.

**BOARD  
DISCUSSION  
6:26 PM**

Nogal wished that it would have been a B-1 request and agreed with DeMeester. She felt it would not have a small-scale impact with the density that was being proposed and was not crazy about it. She did not feel like that it was the direction [to go in] for that particular area.

Sirucek had two problems with the application. He was in agreement with Nogal and stated he could live a little better with B-1 than B-2 zoning. He also stated that there was a lot of support for the visual corridor and felt this could complicate it. The couple mile stretch was one of the key areas between Kalispell and Whitefish that still had a visual opening of the objectives that were laid out in the growth policy. He was concerned that, accumulatively, it would go away piece by piece and when that happened there would be a lot of regret. It wasn't going to take a whole lot more to have a significant effect on one of the nicest views when you drove into the valley. He was also concerned about being able to develop a better traffic overlay with the highway and was having a hard time buying into having strip development from Ponderosa through the whole strip. He felt it was a detrimental impact vs. these small acres that were developing in to businesses. He felt the losses were much greater than the gains in the long term and therefore could not vote for it.

Adams understood what they were saying but felt the precedence had already been set and they could not go back and retroactively change the previous zoning. They already had a big chunk of B-2 just north of it, even though nothing was being done with it presently.

Sirucek felt there were still enough spaces where there were some views. He was concerned it would turn into as it is south of town; with back to back businesses and the view gone.

Nogal felt this is where it became difficult. They were trying to affect planning and it was apparent that people were becoming more vocal about a lot of issues like this. She felt this was one of those times where B-1 zoning would be lovely and changes to the zoning would allow the owner to develop

but the B-2 pushed her too far.

Sirucek said the accumulative facts were real. He referenced a letter in the newspaper about the Planning Board ignoring accumulative facts. Sirucek felt this was a prime example and they should at least be talking about it.

Larsen felt it was a good discussion but agreed with Adams because the zoning had already been out there, including what had been set by City of Kalispell. He did not see an open, visual area anymore. Nogal said it was not pretty and Larsen agreed. He understood what Nogal and Sirucek were saying but, the way he looked at it, it fit in the area as the application was now.

Lake said that subject property would benefit from some development because it was currently run down.

Adams pointed out that, directly across the highway and in the city, was Silverbrook and was not completely subdivided yet. There were still houses going in. He understood that it was on the other side of the road, and not within the view shed of the swan range, but would be built by the city whether they liked it or not.

**ROLL CALL TO  
RECOMMEND  
APPROVAL  
(FZC-19-21)  
6:34 PM**

The motion passed on a 4-2 roll call vote. Sirucek and Nogal dissented.

**G&M TRUST  
MAJOR LAND  
USE REVIEW  
(FCMU-19-01)  
6:35 PM**

A request from G&M Trust with technical assistance from Bruce Boody Landscape Architecture for a Major Land Use Review for 'Guest Cabins' within the Middle Canyon Region of the C.A.L.U.R.S (Canyon Area) Zoning District. Access to the property exists via Grizzly Spur. The property is located at 1449 and 1453 Grizzly Spur, West Glacier and contains approximately 23 acres.

**STAFF REPORT  
6:35 PM**

Rachel Ezell reviewed staff report FCMU-19-01 for the board.

**BOARD  
QUESTIONS  
6:44 PM**

Sirucek interjected and asked that staff point out where the easement in question would be. She did so. He asked the location of the piece of property that was in conflict over the easement. Ezell referred to a document they had received which highlighted the easement and pointed out that it would, instead of going through the property along the lake, bring the road across the other end of the property. This road did not currently exist but appeared as being roughed in currently. There was currently no signed easement for it at this time.

**CONTINUATION  
OF STAFF  
REPORT  
6:46 PM**

Rachel Ezell continued to review staff report FCMU-19-01 for the board.

**BOARD  
QUESTIONS  
6:47 PM**

Nogal asked if the conditions were site or project specific. Staff replied that the conditions include both standard and project specific together.

Sirucek asked, with the construction that had already happened, if there had only been one septic tank installed. Staff was aware that they were working on approval but was unaware whether it had gone through. Sirucek clarified that he was asking, in regards to the construction that had happened already, if they had tied in a septic system. Staff deferred to the applicant for that clarification.

Larsen wanted to confirm with staff that the application had met the criteria. Staff said, as conditioned, it met the criteria of the CALURS. Staff reiterated that there were some conditions that were to be met and might take some additional work. If those conditions were met, then it did meet the performance criteria of the CALURS Middle Canyon.

Larsen addressed that some of the public concerns were regarding the bulk density. It had been addressed [in the staff report] how many cabins they were allowed in the staff report.

**APPLICANT  
PRESENTATION  
6:49 PM**

Susie Dietz, 11900 Trails End Dr., introduced herself as the applicant and shared her personal background and ties to Montana. Her intent with this property was to use it as her retirement home and help supplement her expenses with night time rentals. She had done the same with her property in Big Sky and the same with her property in Girdwood, Alaska. She enjoyed sharing the joys of Glacier [Park] and the area with tourists and people. She said it was a beautiful area. Her plans were to make it peaceful, quiet, and rural. She did not want a high density resort. She said she intended to make Lake 5 better by improving the area that needed improvement.

Bruce Boody with Bruce Boody Landscape Architect, Inc., 301 2<sup>nd</sup> St. Ste 1B, was the technical representation for the applicant. He discussed his goals of bringing the [current] buildings into compliance. They had worked to come up with a plan that met the CALURS standards. They had three goals in mind since they had started the project. The first was to make it code compliant, including bringing the two non-compliant buildings in to compliance. They also wanted to work within the overall strategy of CALURS, which did recommend some economic growth outside of the planned service areas. It also limited it in the way of the density being 1 cabin per 2 acres. They followed that density in planning this. What was being reviewed tonight was 7 [new] guest cabins and one new residence. The residence was exempt from review as 1 residence per parcel was allowed outright in the zoning district.

He said they wanted the development to work as a whole, with the grandfathered structures, the proposed structures, and the non-compliant structures.

Since they had submitted the last plan, they had made some minor changes. He explained in depth the changes that had been made. They had addressed some improved fire, health, and safety aspects including providing a passing lane for emergency vehicles and discussed this in detail. He pointed out that they had a dry hydrant with the idea that it would serve everyone on the road. He also pointed out that they had complied with setbacks. He also wanted to note that the closest proposed structure, of residence, to the lake was 145' off the lake. The only other buildings that were close to the lake were storage buildings and unoccupied structures and therefore their impact would be minimal.

He pointed out the highlighted structures as being the proposed [new] buildings as well as the existing buildings.

Boody was in agreement with the findings and conditions in the staff report and planned on abiding by them should they be approved. He felt they had gone to great lengths to preserve as much open space as they could. They grouped the units. He referred to clustering as defined by the CALURS being within the subdivision regulations. They were not doing a subdivision but tried to conform to the idea of the cluster by grouping the cabins and development. The buildings on the lakeshore were already grandfathered in. They tried to meet the spirit of the CALURS regulations by utilizing the flatter areas for development.

He addressed traffic concerns by saying it would increase about 50 cars a day, which averaged about 4 an hour. He said it did not meet any thresholds that would require traffic studies.

He also addressed the standard of the CALURS and said, because it was an existing private road easement, it was not under review. Staff had noted that as well. They were trying to accomplish road improvements that would not only benefit this development but the area as a whole.

He also addressed the wildlife corridor and noted that it stretched to the railroad and 7,700' beyond the property line to the river which was predominately owned by the Forest Service and BNSF.

**BOARD  
QUESTIONS  
7:04 PM**

Larsen asked Boody to clarify what he meant by "non-conforming" and asked him to identify where those buildings were located. Boody said they had been built without a permit. Larsen clarified that they had been the ones that were not put in under regulations and that this application hoped to fix that. Boody said that was correct.

Sirucek asked the previous question regarding the state of septic tanks and newly built buildings. Boody said, as he understood it, they had not put in any new septic systems. Sirucek tried to clarify that the building had been built without septic tanks. Boody said it was planned to be but then the county said the buildings were not conformed to code so the work ceased. They brought in, on a strict and monitored scheduled, porta-potty units to get them through the reservations that had already been accepted. Once those were completed, it stopped until it could be brought in to compliance.

Larsen asked about the dry fire-hydrant. Boody explained in great detail how a dry fire-hydrant worked.

Larsen addressed the fact that MCLUAC had recommended denial with one of their concerns being clustering. Larsen asked if when MCLUAC had discussed the subject of clustering, they were referring to subdivision. Boody replied that clustering was specifically under subdivision regulations and noted this was not a subdivision, however, he felt it was important to take the intent of the clustering regulations by trying to group the buildings and stay off steeper terrain. They were trying to perform to multiple performance standards in the regulations by doing it the way that they did.

Sirucek asked about the Grizzly Spur easement concern and where the easement was located. Boody said the applicant had been working with the neighbor to get a second access road. That was what the red line represented and would be an addition to Grizzly Spur. Sirucek asked about the letter received which addressed a lawsuit had been filed about the easement. The lawyer interjected to discuss the logistics.

Connor Walker with Frampton Purdy, 530 West 19<sup>th</sup> St., was the legal representation for the applicant in the litigation. He explained where the existing road was, where the lawsuit pertained to, and where the easement would not be extinguished. He pointed out a second road that the property owner was putting in and would give access to the property, whether or not the litigation went through, creating a second loop around. There was not a signed easement but there was an agreement and a road had been roughed out which was exactly adjacent to the railroad property. The railroad also had an access easement and was cut off by a gate. The fire trucks had a key to the padlock on the gate to access the road. The road would extend along that railroad track and would double the size of the road.

Sirucek asked which portion of the easement was in question. Walker pointed out the easement in question and their right to use the road.

Larsen asked about the easement to the north and wanted confirmed that there was an agreement. He asked if the agreement was going to come to fruition. Walker said there was a question and it was not in stone because of the fact that, in litigation, people did not want to commit to things until it was



completed. The other party had agreed to allow the applicant to rough the road in.

**AGENCY  
COMMENTS  
7:12 PM**

There were no public agencies present to comment. The staff reviewed the written comments during the staff report presentation.

**PUBLIC  
COMMENT  
7:13 PM**

Sean Hinchey, 796 Ross Point Dr., spoke in opposition of the application, he had submitted a public comment letter to the board but wanted to bring a human element to it. He did not begrudge the applicant in wanting to build her dream home but did not feel it was appropriate to commercialize it. He felt it could not handle the carrying capacity of 7 new cabins along with entertainment centers. He loved the area and wanted to protect it.

Terry Divoky, 775 Belton Stage Rd., spoke in opposition of the application. Her greatest concern was that the applicant had not been held accountable for the zoning violations. She explained there had been a cease and desist order placed on the property and the construction continued. She presented a timeline of the violation and how the applicant continued to proceed with the project. Divoky was uncomfortable with the staff report saying that if the application was approved the violation would then be in compliance. She was concerned over the precedence that would be set for future developers. She had visited the easement and viewed what looked like a newly developed road going over a wetland, which also concerned her.

Jean McDonald, 420 Belton Stage Rd., spoke in opposition of the application. She lived across the lake [from the subject property] and saw everything and knew everything that happened on the lake. She was concerned about the existing cabins not being properly built and sold as is. She gave a brief history of the subject property and said she had never heard of any septic system improvements on those buildings or if they even had any at all. She said the three [existing] cabins did not even have bathrooms at first. She was concerned about the impact on environmental health from the leach fields or septic systems on the subject property. She was also opposed to the applicant renting out the existing cabins. She was opposed to her running a business, which had not previously existed, while she currently had a different job. She believed they were going to create a destination wedding venue. She was concerned of the possible increase of traffic if the wedding venue were to occur. She was also opposed to the RV park that would be going in. She was concerned about the increase of population and traffic. She was concerned about the affect it would have on wildlife and wetlands. She really cared about her lake and did not want to see the negative impacts and felt it was not big enough to hold this type of property. There was another piece of property on the lake that will be going up for sale and was concerned about the precedent being set by this property. She was also upset that there were two cabins, without a septic system, that had still been rented out. She was in agreement with everything that had been said prior.

Michael Kopitzke, 1460 Grizzly Spur, spoke in opposition of the application. He lived directly east of the subject property. He opposed, what he referred to as, a cookie cutter development in the middle of undeveloped ground. He said they were the only permanent resident on that side of the lake. He described the area as being pristine and was opposed to this project being placed in the middle of it. He was in agreement with the frustration expressed that the applicant had continued to build after being notified of a zoning violation. He also discussed the Canyon Plan and said it was like a constitution that everything in the Canyon should be upheld to. He read sections of it and argued how the application was contrary to the Canyon Plan. He also read the easement and argued they did not meet the intent of the easement. He was concerned about the increase of traffic on Grizzly Spur and road maintenance. He said it did not classify as a cluster development. He felt the applicant has chosen to ignore the CALURS plan and he wanted to protect the spirit of the regulations. He considered it as a maximum impact development.

Cody Mc Carthy, 195 Skyles Lake Lane, spoke in support of the application. She worked for the applicant and currently lived on the property. She said the applicant had worked hard at fixing up the property and trying to make it better. She also had been trying very hard to get septic approval in order to update the cesspools. She heard the talk and read the newspaper articles and felt it was very one sided. It was her hope that [the board] listen to the proposal, sought the laws, and voted in her favor.

Megan Wiberg, 5800 Blakenship Rd, spoke in opposition of the application. She was concerned about safety hazards resulting from the increase of traffic on Grizzly Spur. She was also concerned about the negative impact on wildlife. She felt the development was excessive and did not meet the CALURS plan. She was in agreement with others and opposed running a business in a residential area.

Lawrence Parsons, 11885 Hwy 2 E, spoke in opposition of the application. He read his letter of opposition that had been submitted prior to the meeting for to the board for review. He felt only one person would ultimately benefit from this development, the applicant, at the expense of every residence of Lake Five. He questioned if this was a retreat or a resort. He was frustrated with the construction of the road being in the middle of a wildlife corridor and wetland. He was concerned over the negative impact from the increase of traffic, air quality from dust, environmental impact, and overall negative impact on the community. He discussed the proposed site plan and said it appeared to be more like a Disney Park. He guessed the only reason why the county would allow this was to avoid a lawsuit since the investor already had one against the neighbors that shared a road. He was in agreement with the concern brought up from Fish, Wildlife, and Parks over the negative impacts it would have on the wildlife. He was concerned about the possibility of chemicals being used for weed control. He was concerned about the dogs on

the property from visitors and questioned if they needed a doggie daycare, which opposed the CALURS section addressing doggie daycares. This was in place as to not negatively impact neighbors or the character of the region. He expressed that the statement of CALURS was to respect the neighbors and wildlife. He was concerned over the anthropomorphic impact it could have in the area. He stated that the approval from Planning and Zoning of this application would disregard the wishes of a state entity (Montana Fish, Wildlife and Parks) to protect mother nature, disregard the community and the Middle Canyon Land Use Advisory Committee to reject the application, and the neighbors. He did not want to be the ones file complaints, ending with no penalties. He was also concerned that it would become into a wedding venue and a venue for family reunions.

Tracy Anderson, 115 Little Mountain Rd., spoke in support of the application. She had worked with the applicant in designing the cabins. She spoke of the applicant's character and said the applicant intended to keep the integrity of the property. She said the applicant wanted to keep the cabins quaint and was committed to maintaining and upgrading her property and doing what was right for the area. She said Dietz had always wanted to do what was right for the area and was a sincere person. She said they had discussed the possibility of weddings and it had been decided that they would not go forward with that. She said the people that had stayed there previously were respectful. She had seen more good than bad on her property.

Rick Yates, 23 Gulo Terrace, spoke in opposition of the application. He wondered where the water for the development would come from (i.e. the lake). He did not feel the county was about allowing [people] coming in, throwing a bunch of money around, and get away with non-compliance. He was against the development, he did not feel like it was the right place, and was in agreement with what had been shared.

Pady Dusing, 115 Garden Dr., spoke in opposition of the application. She discussed the historical use of the Lake 5 area. She was concerned about the negative impacts on the wildlife in the area. She was concerned over the water quality and sanitary issues. She was frustrated that development continued after a violation had been issued by Montana DEQ. She stated that Dietz felt entitled and above the law and did not feel like she needed to play by the rules. She said that advertising the rental cabins was in violation of the county regulations which the board was there to uphold. She felt that it was in flagrant disregard to the board, the environment, and neighbors that developers come into a pristine environment and do as they please. She felt they should not be rewarded for total disregard to the law and order of the land and asked they be held accountable. She stated they needed to be held accountable. She was not in favor of this large scale resort disguised as a short term rental vacation operation. She asked that the board deny the permit based on the access issues, septic and water issues, wildlife impacts, the commercial nature, and the historic nature of the area.



Suki Pfirmman, 937 Denver Street., spoke in opposition of the application. She recreated in the area and was concerned about the increase of traffic and dust control. She was confused by the testimony of support given because it was said that Dietz was doing what was right and would abide by the rules but it was obvious to her that Dietz had done none of those things. As a psychologist, she stated that past behavior was a prediction of future behavior. She asked the board deny the permit for the project and, should the project go through, they have agencies in place that would be a “watch-dog” over the applicant. Pfirmman stated the applicant blatantly disregarded and disrespected all of [the board] as well as the state of Montana; whose rules and regulations have been in place for a purpose.

Ron Ridenour, 540 Belton Stage Rd., spoke in opposition of the application. He was a swimmer who frequented Lake Five and said it was the best water in the world for swimming. He discussed the history of the area and said it was a magical place and didn’t want the magic changed just because someone could. He requested that the board recommend denial.

Sharon DeMeester, 415 Chestnut Dr. and 130 Glacier Ridge Dr., spoke in opposition of the application. She read from the document she had presented to the board, including advertisement material from Whistle Stop Retreat, along with her public comment that she had submitted prior to the meeting. She expressed frustration that there had been a continuation of business after the violations had been served. Her concerns were the DEQ approval, the easement of the roads, and the roads being close to the wetlands. She said there should not be any retail or events but they had heard tonight that there would be events. She discussed the conditions of approval, as suggested by the staff report, and rebutted the ones that were not and/or could not be met. She was concerned that there were no provisions for dogs in the plans. She was also concerned about people bringing their horses, the lack of accommodations for them, and the possible interactions they may have with bears. She calculated the possibility of 58 people being able to stay on the property and stated that was more than a VRBO. She viewed it as a commercial development resembling a hotel. She felt that there had been no consideration given to the Fish and Wildlife comment. She was opposed to the development and felt that it was too much in the wrong place.

Roger Beck, 1277 Jellison Rd., spoke in support of the application. He was an electrical contractor that worked for Dietz. He said the property had been for sale for 2 years and was very obvious as to what it would be used for. He stated that anybody else could have bought that property. He said Dietz did not built any new buildings on the lake but had only done her best to update them. He stated that she wanted to do the right thing. He felt she had received some bad advice and counsel, in which he had relayed to her. He did not think Dietz was a bad person but that she had screwed up and was trying to straighten it out. The septic was a big concern and needed to be sorted out. He

said she had put in a well as opposed to getting it out of the lake, unlike many of the other residences on the lake. He felt it would be a good idea to check all the residential septic systems to see who was in compliance and who was polluting the lake. He understood both sides of the argument. He said that [this project] was not the same thing as the RV Park that had been developed, which he felt was a travesty. He agreed there were issues and they should correct it by conditioning it. He felt like the thing with the neighbors got out of hand and expressed that he had felt harassed by the government agencies at one point. He stated it was time to find a solution, fix the land, and make her a good neighbor.

James Ridenour, 125 Corbett Ln., gave history of Grizzly Spur. He said he was responsible for talking with Dietz regarding possibility of developing a road that ran parallel to the railroad. He said the railroad already encroached the wildlife corridor and the new road would actually open up the wildlife corridor because it would parallel to that. He was not in favor of the growth but said they had to take responsibility for the growth that took place all the time. He discussed the growth and the impact on the environment that it has had. His opposition to the application was that it did not make any consideration for the development to the east, specifically the Swanberg Family. He asked that application not be allowed to go through until they have satisfied access issues with the Swanberg Family and subsequent owners down that lane and come to a reasonable agreement.

Wendy Helm, 7007 W. Mason Rd., spoke in opposition of the application. They owned property with an easement that went through their property. They inherited the property. She said they had never met the applicant, however, their family had been served a lawsuit in an effort to extinguish an easement. She discussed the actions of the applicant and said her actions were not right, nor how someone should treat others, let alone neighbors. She asked the board hold the applicant accountable to the integrity [the board] was expected to maintain and they expect the other members of the community to uphold.

Tim Strand, 937 Denver Street, spoke in opposition of the application. He recreated in the Lake 5 area. He was opposed to the idea that people should ask for forgiveness rather than permission. He said that may work on interpersonal relationships but should not work before a legal board, state law, or county law. He was surprised that someone in the medical field would be willing to rent homes in a place that, based on testimony, had inadequate sewer. He asked the board recommend the advertisement be taken down and the rentals prohibited until all concerns have been addressed appropriately and legally.

James Mayrand, 169 Double Lake Ln., spoke in support of the application. He stated growth was inevitable; one could either buy all the property around them or they can deal with growth. He felt it should be considered if it was good growth, good place, and right time. It appeared she had met all the

requirements for this application and felt it was good growth as she had 23 acres. If she were to correct the septic and the issues with old buildings, then it would be better for the lake and everybody. It would set a precedence for good development around the lake and he was all for that. He understood there were hurt feelings and personal conflict but that was not what was being decided upon. He felt the board should vote in favor.

Richard McCarthy 195 Skyles Ln, spoke in support of the application. He felt the criteria had been met. He said Dietz was now a part of the local "flavor". He asked they move forward with the application and have her follow the rules. He said she cared for the place and he felt she exhibited that.

Jean Tabbert, 208 High Line Blvd, spoke in opposition of the application. She wondered why it was being evaluated as guest cabins rather than the resort that she felt it was. She asked why those who spoke in favor of the application appeared to be on the developer's payroll and wondered what precedence would be set for future development in West Glacier.

Juliann Hinchey, 796 Ross point Dr., spoke in opposition of the application. She was concerned about the negative impact on the very small lake. She said it was already overly busy and there were too many large boats. She was concerned about the safety issue and that somebody would get hurt. She was concerned about 50 people potentially using boats and not being aware of the rules of the lake.

**BOARD BREAK  
8:55 PM**

**APPLICANT  
REBUTTAL/  
COMMENTS  
9:15 PM**

Boody clarified that they were working on a plan for the septic but it was not ready to submit. Larsen asked about the water system. Boody confirmed there was a well but was not the ultimate well. They were going to do a second well and have a multi-user water system. They were planning on moving all the septic away from the lakeshore, a level 2 treatment, closer to the railroad tracks. The design was not done but they have not stopped working on it.

Beck said that the existing well, that was servicing the cabins on the lake, was a sand point. The new water system, approx. 50' deep, would be higher up on the property. Dietz said the water did not come from the lake. Larsen confirmed that it would be served by wells.

**STAFF  
REBUTTAL/  
COMMENTS  
9:17 pm**

Staff addressed the letter from DEQ and noted a COSA could not be issued for Tract 2 until Planning and Zoning approval with Flathead County was finalized. The additional septic and sanitation issues could not be resolved until the Planning and Zoning issue is granted.

**BOARD  
QUESTIONS  
9:18 PM**

Sirucek asked staff to clarify testimony which contradicted the staff report in that there was a conflict with the Canyon Plan and what was proposed. Staff stated that the Canyon Plan reflected a very rural area. She said Lake 5 was a community that fit in between the communities of West Glacier and Coram. Residential dwellings dot the shorelines of both lakes. It was a fairly rural area but she also referred to the area that had businesses. The businesses on Lake 5 included five (5) businesses that were listed in the Canyon Plan. It showed the historic nature of the Lake 5 area. The staff report had noted there might be some impact to the wildlife corridor. There was a balance that historically it had served camping and lodging places, while having a rural feel to it. To answer Sirucek's questions, staff replied that to some extent yes and some extent no.

Sirucek asked if there were no major black and white [conflicts] and staff said that it met the black and white of the CALURS Zoning, which was the regulatory document.

**MAIN MOTION  
TO ADOPT F.O.F.  
(FCMU-19-01)  
9:21 pm**

Thompson made a motion, seconded by Sirucek, to adopt staff report FCMU-19-01 as findings of fact.

**BOARD  
DISCUSSION  
9:22 pm**

Nogal asked if an applicant proposed a 50' setback from any natural body or riparian and how that could be enforced. Larsen said it would have to be a condition if they wanted to implement it. Staff replied that the 50' from any natural body or riparian area was conditioned as #8.

Larsen asked staff about Finding of Fact #2 and how staff came to the conclusion that the access was acceptable. Staff came to the conclusion based on amount of additional traffic, the 50 additional proposed trips, and the access and road standards. There were different standards as to what would overload a road and staff read the road standards in CALURS. Her understanding of the standard was that it should not be applied to shared private roads serving tracts of record in existence at the time of adoption of the regulations. She said the applicant did note that they were trying to provide pullout areas. It was a single lane road but, in other parts in Flathead County, there were short term rentals on single-lane roads. It was a gray area. She said you could find that the standards for an overloaded two lane local street being at 1000 vehicles per day and therefore came to the conclusion that 50 additional vehicle trips per day would be acceptable given the language of CALURS.

Larsen saw what she was saying; that if it was a subdivision it would have to be built to the standards of the regulations. Because it was not a subdivision, those performance regulations said it was grandfathered in. Staff agreed, however, that a two lane road would benefit the proposal as well as an additional access.

Sirucek discussed the road and thought there should be some significant usage of signage. He was concerned about the safety issue by putting people who have never been out there on that road. He felt there should be, with the upgrade of usage, some significant usage of signage and wondered if it was under their wing to add another condition to add signage. Larsen said that would be addressed when they got to [conditions], not the findings.

Larsen understood why staff came up the findings but struggled with the safety aspect from the road impact. Larsen stated that the DEQ issue didn't concern him as much because the applicant is following a standard process of getting planning approval first. The only finding that Larsen struggled with was finding #2 but it met the regulations. He asked what the board thought.

Lake asked, if the finding were to change to add signage, could it be enforceable. Larsen said it would have to be a condition and therefore could be enforced.

**ROLL CALL TO  
ADOPT F.O.F.  
(FCMU-19-01)  
9:31 PM**

Motion was passed unanimously on a roll call vote.

**MAIN MOTION  
TO  
RECOMMEND  
APPROVAL  
(FCMU-19-01)  
9:31 PM**

Thompson made a motion, seconded by Nogal, to recommend approval of FCMU-19-01 to the Board of County Commissioners.

**BOARD  
DISCUSSION  
9:32 PM**

Sirucek discussed adding a condition for additional signage. Nogal questioned whether it would be appropriate to approve it with the easement saying that commercial was not allowed. Larsen agreed but pointed out that it did not mean that he could not add a condition and saw it as two different things. Sirucek felt they should condition it before they deal with the issue of voting for approval. Adams asked him to clarify what type of signage he was talking about and where. Sirucek felt that there should be something on each end, notifying people that it was a single-lane road with minimal turnouts and maybe the county engineer could put a speed limit on there.

Mussman asked what the recommended speed limit might be. Lake asked if the county had a standard for a single-lane road. Sirucek said that the road was moderately flat, so there was good sight distance. Mussman recommended 15 miles per hour, as it is in school zones.



**MOTION TO ADD  
CONDITION #14  
9:34 PM**

Sirucek made a motion, seconded by Nogal, to add condition #14 to state the following:

*A secondary motion was made by Sirucek and seconded by Lake to add Condition # 14 to state "Signage shall be placed at the intersection of Grizzly Spur and Blankenship Road as well as the subject property notifying road users that Grizzly Spur is a single lane road with minimal turnouts with a posted speed limit of 20 MPH."*

**BOARD  
DISCUSSION  
9:35 PM**

Adams asked staff about final road count estimation, based on the current numbers and proposed numbers, being a total of about 77 per day. Staff discussed the estimates for the subject property but noted there were no estimates for Grizzly Spur in total. She explained how she came to that conclusion based on how they calculated traffic for existing structures and wanted to separate proposed structures from existing structures.

Someone from the public commented that it was a dead end road. Sirucek changed it to the beginning of the property and changed it to say "at the intersection of Grizzly Spur and Blankenship Road".

**ROLL CALL TO  
ADOPT  
CONDITION #14  
9:37 PM**

Motion was passed unanimously on a roll call vote.

**BOARD  
DISCUSSION  
9:32 PM**

Nogal asked the applicant some questions about how the violation began in the first place and the applicant noted that they built with the understanding that they did not need permits and defended her process. Nogal asked about the lawsuit against the neighbors regarding the easement and the lawyer said it was not part of the application.

Nogal addressed the Beck's comment and said it was not their job [as a board] to make [the applicant] a good neighbor. She also addressed McCarthy's comment that the judgement of this was not their issue but they can judge how somebody behaved towards developing. She did not see the development as sensitive or as a sanctuary. She saw it as an advertisement to something that was all things to all people, a party place, and rough on the land and lake. She questioned that maybe she did not get to judge that.

Sirucek discussed the soils that were in the area and how the lake was created. He said it was very permeable soil. It did not do well with septic tanks and nutrients. He expected that when DEQ reviews the plan she is going to have some problems. He felt Fish, Wildlife, and Parks were understating the importance of the corridor with regard to grizzly bears and he asked that they do a little more research and what those conflicts are. He heard that she was matching up and fitting things in to the plan but he did not think it fit. He said

with some modification, she could make something that would work there that would meet some of her goals and would be neighbor friendly.

Lake asked how many businesses were on Lake 5 and an unidentified member of the public said that the resort was the only one besides VRBO rentals. Lake asked if any of the VRBO rentals were accessed through Grizzly Spur and the audience replied no. Lake asked what was less impactful; this being subdivided in to smaller lots or what was being proposed. Lake said he was also struggling with the easement stating that it should be used for only residential services.

Walker stated that the easement was not for Mrs. Dietz's property but for the properties to the east. He said those properties must be residential. Her property easement was a separate easement. He said it came down to the dominant vs. servient tenement of the easement and she was the servient tenement.

Kopitzke explained the easement as he understood it and the history behind it. He said they all have used the road for 70 years. They had legal easement from Blankenship Road to their property. It ended with a gate at the railroad property.

Larsen asked him if, in his view, the easement required residential use. Kopitzke provided a copy off all 5 easements to the board and explained them in detail, showing that they stated residential [use].

Lake asked that someone address where each of the easements were located on the map in which Kopitzke did. Larsen asked who originally drafted the easements. Kopitzke responded Cox through Burlington Northern and explained the history behind him making sure everyone had access.

Adams asked if vacation rentals were considered commercial or residential. He understood it was being used for profit but a long term rental would be used for profit as well but would be considered residential.

Mussman read CALURS definitions on short term rentals and whether or not this would be considered residential or commercial venue. He also discussed short term rental regulations and said he assumed that the cabins, to be developed on the property, would be utilized for nightly/weekly short term rentals for less than 30 days. Adams confirmed that it would still be considered residential and Mussman said that was correct by using the logic and definition in CALURS.

Adams confirmed that the easement being residential did not really have any bearing on it. Larsen asked if that was how staff interpreted it. Mussman said that could be one interpretation but the issue came with it being more than one short term rental. These, would more than likely, be built as dwelling units

that would be rented out for less than 30 days and be short term rented. Those definitions matched up to a residential use.

An unidentified member of the public stated, "much like a hotel use." Mussman said that it did say that. Larsen asked if staff had reviewed the easement and staff replied that no easement documents were provided with the application. She tried to do some initial research but recognized that she was not an attorney.

Larsen said the only thing that they were trying to comprehend is whether or not this was considered for residential or commercial purposes. Larsen asked for the staff's opinion. There was in depth conversation about the commercial vs residential nature of the proposal.

Walker addressed the subject by stating cases from the Montana Supreme Court, who defined it a residence if it was rented out as a single family dwelling. It was not considered commercial use if people occupied the property. They have had cases go to court on this issue and it was pretty clear, under Montana Law, that short term rental is counted as a residence.

Larsen had a couple of questions. He wondered if the Pavilions were in compliance with the regulations and staff pointed out they were considered accessory structures but were not allowed to host weddings or any money making endeavor that did not include renting out a house. She gave examples of what permissible uses and non-permissible uses would be for the Pavilion. They would not be allowed any outside commercial events that aren't associated with the cabins.

Larsen said his biggest concern was the access. He understood that wildlife was a concern. They could condition things to address these concerns but they already agreed to bear proof containers and such. He said the board had to ask themselves whether or not the conditions that they had met the health, safety, and general welfare. He said the safety issue came down to the road and felt that was the most legitimate issue that had come up and each member had to make that decision. Larsen said that he struggled to answer that question. Sirucek said that he struggled as well.

Adams revisited the road count and asked if it was 77 trips through the piece of land. Staff replied yes, as a result of the development of the property. Adams asked if there was 1 residence past the property and staff replied a handful. Adams said that, from the subject property alone, if you calculated 77 trips per day, it came out to be a little less than 10 minutes per vehicle within the main operations of the day. He felt 1 car every 10 minutes, at 20 mph, was not a busy road. Larsen said it was a very low volume road based on road design. His concern was that it was a single-lane road and they were stuck with the way that it was due to easements.



Larsen explained how traffic reports are ran through the peak hour. They were probably looking at 7 vehicles during the peak hour but it was still considered peak hour.

An unidentified public member said that if they were to put a visual on it, they would see how it was really only designed for 1 car; it would not be able to take the traffic count that this development was going to add to it. They utilize it in the summer time and when two cars meet, there is one spot where two cars could just barely get around each other. The road dead-ended on the member's property and you could not turn a car around (such as a vehicle with a trailer or fire-truck). They would have to do a road improvement to the existing road to allow volume.

Sirucek said that his feeling was that, because of the road issue, it was not right in his mind. He felt they needed to iron out the easement and seriously take a look at the road issue and if there was possibility for improvement there. He was concerned about visitors coming who do not know the road and could possibly be towing a trailer or something that would put them in a difficult situation on the road. He said the application met the regulations but they needed to be realistic with the idea that they were inviting people from other parts of the world that did not understand the situation they were getting in to. He saw some potential accidents, even with the low volume.

Staff suggested that the board could condition the additional roughed-in access which would be a two lane road and having an easement agreement along.

Nogal asked if the road was under development. Staff replied that it had been roughed in but there was no official easement in place. Nogal asked why they were roughing it in. Staff replied that they were unsure but what they had heard was that the Ridenour and the applicant had discussed the necessity for an improved road. There had been a hand shake agreement and the road had been roughed out through the Ridenour's property with the permission of Mr. Ridenour and through Dietz's property. That would be a two lane road and could be another access, which could be conditioned to mean that she could not move forward, unless she had the access issue for that two lane road completely worked out.

An unidentified public member asked about the road from Blankenship to her property, which was still a one lane road. Staff replied that she would have to have both or at least the portion across Ridenour's property be two lane. This was something staff was only suggesting as an option, the board believed that would improve access in some way. Larsen asked if it was a single lane, and Staff replied that the only portion that was being roughed in was identified on the map by the red line.

Adams said that, the way that he saw it, was that it looked like it was in compliance but he understood the concern. He asked the neighbors to try to

work something out because they had to live next to each other. He said if it went through, that was great, but asked the applicant to put some provisions in there to limit what is allowed to come in, some sort of agreement with the neighbors. He asked she made sure she did not have weddings, late night parties, and come to some sort of compromise. They had to live next to each other.

Nogal addressed the applicant and said that she had scared [the neighbors]. That she did not offer them a yoga studio or retreat. She offered parties, horses, dogs, and kids, and she had scared them. Nogal said she would be scared too. She did not want to provide someone the opportunity to do a sensible development on sensitive land. She said the best thing the applicant did was hire Boody, which she attested to his character, and that gave her hope for the project and that it would be done right.

**ROLL CALL TO  
RECOMMEND  
APPROVAL  
(FCMU-19-01)  
10:24 PM**

The motion passed on a 4-2 roll call vote. Nogal and Lake dissented.

**OLD BUSINESS  
10:28 PM**

None. Thompson left at 10:28 pm

**NEW BUSINESS  
10:29 PM**

Mussman went over the strategic plan for this fiscal year.

**ADJOURNMENT  
10:33 PM**

The meeting was adjourned on a motion by Nogal and Adams at approximately 10:33 p.m. The next meeting will be held February 12, 2020.

  
\_\_\_\_\_  
Jeff Larsen, Chairman

  
\_\_\_\_\_  
Angela Phillips, Recording Secretary

APPROVED AS SUBMITTED/CORRECTED: 3 / 11 /20